

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review by)	
)	
St. John Vianney High School)	File No. SLD-238491
Holmdel, New Jersey)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: October 31, 2003

Released: November 3, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by St. John Vianney High School (St. John), Holmdel, New Jersey.¹ St. John requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² Specifically, St. John requests review of a determination that it did not meet the filing deadline for Funding Year 2001.³ For the reasons set forth below, we remand this application to SLD for further review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ In

¹ Letter from Susan Conrad, St. John Vianney High School, to Federal Communications Commission, filed August 28, 2001 (Request for Review). SLD treated St. John's appeal letter as a request for waiver of the filing deadline. See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Susan Conrad, St. John Vianney High School, dated August 16, 2001 (Administrator's Decision on Waiver Request). SLD directs entities that request such waivers to appeal directly to the Commission, because it lacks authority to waive the Commission's rules even in cases supported by a showing of good cause. See 47 C.F.R. § 1.3 (stating the Commission can waive its rules). However, because St. John does not ask for a waiver of the rules but, instead, for review of SLD's determination, we address the merits of St. John's appeal.

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ See Request for Review. Previously, this funding period would be referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ends on June 30, 2002, previously would have been known as Funding Year 4, and is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

⁴ 47 C.F.R. §§ 54.501–54.503.

order to receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁷ The last day of the filing window for Funding Year 2001 was January 18, 2001.⁸

3. St. John states that it met the Funding Year 2001 filing deadline.⁹ As St. John correctly points out, the standard for determining whether an application was filed in the Funding Year 2001 was whether all parts of the application were *postmarked* by January 18, 2001, including the Block 6 certification page and the Item 21 attachments.¹⁰ Because the latter two items could not be filed electronically, they were required to be sent by mail or express courier also by January 18, 2001.¹¹ St. John electronically filed its FCC Form 471 on January 12, 2001.¹² St. John claims that on January 18, 2001, it also sent the attachments and certification, dated January 12.¹³

4. The issue before us is whether St. John's Block 6 certification page and Item 21 attachments were postmarked by January 18, 2001. To support its assertion that its application was sent on January 18, 2001, St. John directs us to look at the postmark on the envelope that contained these documents.¹⁴ However, the face of our record copy of the envelope bears no indication of the postmark date, aside from a handwritten notation from an unidentified SLD staff person of January 19, 2001.¹⁵ St. John also provides the original note in which one of its secretaries confirmed that the "471 Signature Page" was mailed then.¹⁶ The note is stamped with a postmark date of January 18, 2001 and a postage value of zero.¹⁷ St. John explains that the

⁵ 47 C.F.R. § 54.504(b).

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁸ SLD website, FCC Form 471 Window Opens for Year 4 Applicants; New Filing Requirements Firmly Established (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>> (SLD Filing Window Notice).

⁹ Request for Review.

¹⁰ *Id.*; SLD Filing Window Notice.

¹¹ *See* SLD Filing Window Notice.

¹² FCC Form 471, St. John Vianney High School, filed January 18, 2001 (electronic portion submitted into SLD's filing system on January 12, 2001) (St. John Form 471).

¹³ Request for Review.

¹⁴ *Id.*

¹⁵ St. John Form 471 (envelope containing certification and attachments).

¹⁶ *Id.* Similar material was sent to SLD. *See* SLD Appeal Letter.

¹⁷ *Id.* (attachment).

school has a postage meter that issues a postmark on mail, and that the date is set to state the next day at approximately noon each day when the mail is picked up.¹⁸ We note here that such meters, also known as “postage evidencing systems,” are regulated by the United States Postal Service, and authorized users are required to operate them so that the postmark date is rendered accurately.¹⁹ We note that this agency has given credence to dates stamped by licensed postage meters in the past.²⁰

5. We are unable to independently verify any postmark date on the copy of the envelope, or any indication that the envelope was sent by postage meter.²¹ We find that in this particular situation, however, given there is precedent for considering evidence from licensed postage meters, it is appropriate that St. John’s application be considered as timely filed. Thus, we grant St. John’s Request for Review and we remand their application to SLD.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review from St. John Vianney High School, Holmdel, New Jersey, filed on August 28, 2001, IS GRANTED and REMANDED to SLD for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁸ *Id.*

¹⁹ Domestic Mail Manual, Issue 56, 777 and 793 (Postage Meters and Meter Stamps, Date Accuracy) (updated through PB22067, January 10, 2002) (as found at <<http://pe.usps.gov/default.asp>>) (“The date of mailing in the indicium must be the actual date of deposit, except that mail entered after the day’s last scheduled collection from the licensing post office or collection box may bear the actual date of entry or the date of the next scheduled collection from the licensing post office or collection box”) (“When the licensee knows the mail will not be tendered to the USPS on the date of mailing shown in the indicium, the user should use a date correction indicium”).

²⁰ See *Application of Gary E. Stoffer*, File No. D034228, Order, 13 FCC Rcd 14056, para. 8 (Wireless Telecom. Bur. 1998) (finding postage meter tape on envelope from the Commission casts sufficient doubt on date on Notice of Dismissal); *Gannon University Broadcasting*, CSR-3922-C, Memorandum Opinion and Order, 10 FCC Rcd 8619, para. 5-7 (Cable Serv. Bur. 1995) (finding date of university’s postage meter stamp casts doubt on likelihood material was mailed before that date).

²¹ St. John Form 471 (envelope containing certification and attachments).